

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 5

IN THE MATTER OF:)	Docket No. V-W-00-C-610
)	
NICOR MERCURY SPILL SITES)	ADMINISTRATIVE ORDER
)	PURSUANT TO SECTION 106(a)
)	OF THE COMPREHENSIVE
)	ENVIRONMENTAL RESPONSE,
Respondents:)	COMPENSATION, AND
)	LIABILITY ACT OF 1980,
NICOR GAS)	AS AMENDED, 42 U.S.C.
CHICAGO HEIGHTS IRON & SUPPLY)	\$9606(a)
)	

I. JURISDICTION AND GENERAL PROVISIONS

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9606(a), and delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

This Order pertains to the Chicago Heights Iron & Supply Co. facility at 1715 Wentworth Avenue, Chicago Heights, Illinois, and to other scrap yards and/or processing centers located in the Nicor Service Area where regulators containing elemental mercury have been handled and processed (the "Sites"), which are a portion of the Nicor Mercury Spill Sites (the "NMS"). This Order requires the Respondents to conduct removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Sites.

U.S. EPA has notified the State of Illinois of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

II. PARTIES BOUND

This Order applies to and is binding upon Respondents and Respondents' heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondents

including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondents' responsibilities under this Order. Except as indicated herein, Respondents are jointly and severally liable for carrying out all activities required by this Order. Compliance or noncompliance by one or more Respondents with any provision of this Order shall not excuse or justify noncompliance by any other Respondent.

Respondents shall ensure that their contractors, subcontractors, and representatives comply with this Order. Respondents shall be responsible for any noncompliance.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The "Sites" for the purpose of this Order, consist of the Chicago Heights Iron & Supply Co. facility at 1715 Wentworth Avenue, Chicago Heights, Illinois, and other scrap yards and/or processing centers located in the Nicor Gas ("Nicor") service area where regulators containing elemental mercury have been handled and processed. The "Sites" are a portion of the Nicor Mercury Spill Sites (NMS), which also include mercury contaminated residences. The Sites were identified as part of the investigation and response actions conducted at the private residences, located in multiple Chicago area suburbs and communities throughout the Nicor service area which is spread throughout Cook, DuPage, Kane, Lake, La Salle, and McHenry Counties, Illinois. Metallic mercury was discovered in the basements of the residences where old gas regulators and meters were being replaced by Nicor gas company and/or their subcontractors.
2. On July 24, 2000, U.S. EPA was informed by a resident of a home located in Mount Prospect, Illinois that a mercury spill had occurred at the home and several others in the immediate area. Upon further investigation, it was discovered that on or about July 12, 2000, Nicor and its subcontractor Henkels & McCoy, Inc. (HMI) were relocating outdated gas meters and associated regulators from residential basements to the outside of the homes. Many older gas meter regulators connected to high pressure gas mains were manufactured to include a mercury filled component which contained up to approximately two ounces of metallic mercury. The HMI employee performing the meter replacement would, as common practice, leave the open container of mercury removed from the regulator on the basement floor upon completing the work. Eventually the container would spill on the basement floor and in many

cases the mercury would unknowingly be tracked throughout the homes by the occupants and to neighboring homes. U.S. EPA also received an National Response Center (NRC) report from Nicor with regard to spillage of mercury in residential homes.

3. On July 25, 2000, U.S. EPA, its START contractor and the Agency of Toxic Substances and Disease Registry (ATSDR) personnel responded to the scene of the residential spills and were informed that at least four other Mount Prospect homes were potentially contaminated. Nicor had retained a cleanup contractor (SET Environmental Services) and an industrial hygiene firm (Hygieneering, Inc.) who have been performing decontamination activities since July 22, 2000. U.S. EPA determined that cleanup activities appeared adequate but that confirmation air sampling procedures and cleanup levels to be attained were inadequate. Nicor was informed of proper confirmation protocols to be initiated and were asked to generate and adopt a formal air sampling plan to be reviewed and approved by U.S. EPA and ATSDR.
4. ATSDR contacted the Illinois State Health Department (IDPH) to inform that agency of the spill incidents. Both ATSDR and IDPH have been consulting with many of the residents to ensure that proper medical testing and monitoring have been made available to the residents by Nicor. During the cleanup phase, residents have been relocated to nearby hotels until the homes have been properly decontaminated and deemed safe for return.
5. On July 31, 2000, U.S. EPA issued a combination General Notice and Information Request letter to Nicor, indicating that further investigation and cleanup of potentially contaminated residences was required and that additional information was needed by U.S. EPA from Nicor and its contractor HMI. Nicor continued to investigate and clean up homes voluntarily, under oversight from U.S. EPA, ATSDR, and IDPH. On August 3, 2000, Nicor forwarded its response to the U.S. EPA Information Request. The response included a list of approximately 85 homes where the subcontractor HMI may have performed a mercury regulator change out within the last year or so. This information greatly expanded the number of potentially contaminated homes located in nine other suburban towns. When Nicor refined the actual number of homes where HMI may have performed work, approximately 120 homes were identified and inspected. Of these, approximately twenty additional homes were discovered to be contaminated requiring cleanup. During this time, early to mid August, Nicor was also screening scores of other homes as requested by Nicor customers who had been calling into a hotline established by Nicor to identify homes where subcontractors other than HMI may have recently performed a

regulator change out. On August 25, 2000, a home was screened for mercury contamination where a Nicor employee technician replaced a mercury regulator in 1989. Metallic mercury was discovered in the basement near the location of the former meter set and required cleanup. It was at this point that Nicor made the decision to screen all homes where either subcontractors or Nicor employees may have removed a mercury regulator in the past. On August 26, 2000, Nicor announced that up to 200,000 homes would be inspected and/or screened. Nicor offered a 90 day to six month time frame for this to be completed.

6. U.S. EPA required Nicor to expand its investigation. Specifically, Nicor was directed to investigate the Nicor service centers where regulators were taken after removal from residences, and to investigate scrap yards where the regulators were taken after processing. These locations, which are largely outdoors, pose a greater threat of immediate release of mercury and mercury vapors to the environment than does mercury contamination inside residences.
7. On August 31, 2000, Nicor formerly notified U.S. EPA that at least one scrap yard, Chicago Heights Iron & Supply Co., was discovered to possess up to twelve mercury regulators that had been discarded as non-hazardous scrap metal. On Friday September 1, 2000, U.S. EPA On-Scene Coordinator (OSC) Brad Stimple confirmed the presence of possibly one hundred or more regulators located in several piles on the scrap yard property. Mercury vapor was detected in close proximity to the piles through the use of a Jerome Mercury Vapor analyzer, and metallic mercury was visually observed to still be contained in at least one of the regulators discovered. According to the scrap yard owner, between three and five loads of discarded Nicor regulators and miscellaneous scrap metal was removed from the Nicor Glenwood service center per year.
8. On Saturday September 2, 2000, U.S. EPA and the Illinois EPA began inspections of other scrap yards identified by Nicor, who may have purchased mercury regulators as scrap metal to be later recycled for future reuse. Federal and state inspectors also began inspecting Nicor service centers. Upon removing the mercury regulators from residential or commercial settings, the regulators were transported to these field offices. Nicor employees were to have removed the remaining metallic mercury from the regulators. It appears that Nicor did not have adequate procedures in place for removing metallic mercury from the regulators, or that the procedures were not followed.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA determines that:

1. The Nicor Mercury Spill Sites, including the Chicago Heights Iron & Supply site, are "facilities" as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).
2. Mercury is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. §9601(14).
3. Each Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).
4. Respondent Chicago Heights Iron & Supply is the present "owner" or "operator" of one of the Nicor Mercury Spill Sites, as defined by Section 101(20) of CERCLA, 42 U.S.C. §9601(20). Respondent Nicor Gas is either a person who at the time of disposal of any hazardous substances owned or operated the Sites, or who arranged for disposal or transport for disposal of hazardous substances at the Sites. Respondents are therefore liable persons under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§9601(8) and (22).
6. The conditions present at the Sites constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 CFR Part 300. These factors include, but are not limited to, the following:

- a) Actual or potential exposure to nearby human populations, or animals, or the food chain from hazardous substances or pollutants or contaminants;

This factor is present at the Sites due to the presence of metallic mercury and the associated elevated vapor levels. The presence of mercury regulators and residual metallic mercury discovered at scrap yards, industrial facilities and Nicor service centers presents a potential exposure risk to worker populations as well as to the environment as a result of soil contamination from leaking regulators. Mercury vapor was detected in close proximity of the numerous regulators located at the Chicago Heights Iron & Supply Co.

facility and metallic mercury was visually observed to still be contained in at least one of the regulators discovered there. Mercury vapor levels discovered in at least two Nicor service centers in the Chicagoland area have exceeded the NIOSH recommended worker exposure level of 50 ug/m³. Illinois EPA recorded mercury vapor levels inside the Bellwood regulators located at the Chicago Heights Iron facility up to 137 ug/m³ and in a roll off box at 403 ug/m³. Illinois EPA recorded levels inside the Crestwood service center up to 51 ug/m³. The presence of elemental mercury and elevated mercury vapor levels may be likely at other similar locations in light of these results.

Mercury poses a threat through inhalation, ingestion, and direct contact routes of exposure, and can result in severe nausea, vomiting, abdominal pain, bloody diarrhea, kidney and liver damage, and even death. Metallic mercury is highly toxic when inhaled, and attacks the central nervous system by destroying neurons.

Mercury is a characteristic waste under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq., as amended, and 40 C.F.R. § 261.24, and is a hazardous substance under 101(14) of CERCLA, 42 U.S.C. § 9601(14).

- b) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that pose a threat of release;

Large, bulk containers of mercury are not present at these Sites. However, a large number of gas regulators containing mercury are improperly stored and may pose a threat of release until they are properly secured and disposed of.

- c) The availability of other appropriate federal or state response mechanisms to respond to the release;

The State of Illinois has requested and encouraged U.S. EPA's participation in the investigation and cleanup of contamination arising from Nicor's handling of regulators containing mercury. The State and local Agencies involved appear to lack the funds, resources and expertise to comprehensively oversee Nicor's cleanup activities or to conduct the cleanup activities.

7. The actual or threatened release of hazardous substances from the Sites may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

8. The removal actions required by this Order are necessary to

protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for the Sites, U.S. EPA hereby orders that Respondents perform the following actions:

1. Notice of Intent to Comply

Respondents shall notify U.S. EPA in writing within 3 business days after the effective date of this Order of Respondents' irrevocable intent to comply with this Order. Failure of each Respondent to provide such notification within this time period shall be a violation of this Order.

2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent Nicor shall perform the removal actions itself or retain a contractor to implement the removal actions. Respondent Nicor shall notify U.S. EPA of its qualifications or the name and qualifications of such contractor, whichever is applicable, within 5 business days of the effective date of this Order. Respondent Nicor shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of Nicor or any of the contractors and/or subcontractors retained by Nicor. If U.S. EPA disapproves a selected contractor, Respondent Nicor shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondent Nicor shall designate a Project Coordinator who shall be responsible for administration of all Nicor's actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by Nicor. If U.S. EPA disapproves a selected Project Coordinator, Nicor shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval.

The U.S. EPA has designated Bradley Stimple of the Emergency Response Branch, Region 5, as its On-Scene Coordinator ("OSC"). Respondents shall direct all submissions required by this Order to the OSC at 77 West Jackson Boulevard, SE-5J, Chicago, Illinois, 60604-3590, by certified or express mail. Respondents shall also send a copy of all submissions to Thomas Krueger, Assistant Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. Respondents shall also provide copies of all submissions required by this Order to representatives of the Illinois Attorney General's Office and the Cook and DuPage County State's Attorney's Offices who will be identified to the Respondents by the OSC within 3 days after the effective date of this Order. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant postconsumer waste paper content where possible) and using two-sided copies.

3. Work to Be Performed

Respondent Nicor shall perform, at a minimum, the following response activities:

- a. Develop and implement a work plan to address the Chicago Heights Iron & Supply facility and that may also be utilized for other scrap yards, service centers and other industrial facilities that handled regulators that contain or contained mercury;
- b. Develop and implement a health and safety plan to address the Chicago Heights Iron & Supply facility and that may also be utilized for other scrap yards, service centers and other industrial facilities that handled regulators that contain or contained mercury;
- c. Develop and implement an air monitoring and sampling and analysis program to identify and confirm the extent of mercury contamination at the Chicago Heights Iron & Supply facility and that may also be utilized for other scrap yards, service centers and other industrial facilities that handled regulators that contain or contained mercury;
- d. As soon as any necessary inspections and investigations of the location by State and local regulatory officials are complete, investigate and remove and properly dispose of mercury contaminated materials and media at the Chicago Heights Iron & Supply facility;
- e. As soon as any necessary inspections and investigations of the location by State and local regulatory officials are complete, secure and decontaminate any affected building floors and walls at the Chicago Heights Iron &

Supply facility, and conduct air confirmation sampling to verify that the structures are being decontaminated to acceptable levels; and

- f. Transport and dispose of all hazardous substances, pollutants, wastes or contaminants at a RCRA-approved disposal facility, in accordance with the USEPA Off-Site Rule, 40 C.F.R. § 300.440, 58 Federal Register 49215 (September 22, 1993).

3.1 Work Plan and Implementation

Within 2 business days after the effective date of this Order, Nicor shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondent Nicor shall submit a revised draft Work Plan within 2 business days of notification. Nicor shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Nicor shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan.

Respondents shall not commence or undertake any removal actions at the Sites without prior U.S. EPA approval.

3.2 Health and Safety Plan

Within 2 business days after the effective date of this Order, Nicor shall submit a plan for U.S. EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Nicor shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Nicor shall ensure that the laboratory used to perform the analyses participates in

a QA/QC program that complies with U.S. EPA guidance. Upon request by U.S. EPA, Nicor shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Nicor shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Nicor shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Nicor shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Nicor or its contractors or agents while performing work under this Order. Nicor shall notify U.S. EPA not less than 2 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

3.4 Reporting

Nicor shall submit a monthly written progress report to U.S. EPA concerning activities undertaken pursuant to this Order, beginning 30 calendar days after the date of U.S. EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Any Respondent that owns or controls any portion of the Sites, and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Sites, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

3.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, Nicor shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options

considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

4. Access to Property and Information

Respondents shall provide or obtain access as necessary to the Sites and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Sites and the activities conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, and State of Illinois representatives. These individuals shall be permitted to move freely at the Sites and appropriate off-site areas in order to conduct activities which U.S. EPA determines to be necessary. Respondents shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondents or their contractors, or on the Respondents' behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondents, Nicor shall obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Nicor shall immediately notify U.S. EPA if, after using their best efforts, they are unable to obtain such agreements. Nicor shall describe in writing its efforts to obtain access. U.S. EPA may then assist Nicor in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as U.S. EPA deems appropriate.

5. Record Retention, Documentation, Availability of Information

Respondents shall preserve all documents and information, in their possession or the possession of their contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Sites, for six years following completion

of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondents shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondents shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that Respondents are required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501 et seq.

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR §300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA and 40 CFR §300.415(j). In accordance with 40 CFR §300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondents shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondents shall also immediately notify the OSC or, in the event of his unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondents shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondents shall

also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. §11004.

VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondents at the Sites. Absence of the OSC from the Sites shall not be cause for stoppage of work unless specifically directed by the OSC.

U.S. EPA and Respondents shall have the right to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondents, and Respondents shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

VII. PENALTIES FOR NONCOMPLIANCE

Violation of any applicable provision of this Order may subject Respondents to civil penalties of up to \$27,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1). Respondents may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should Respondents violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

VIII. REIMBURSEMENT OF COSTS

Respondent Nicor shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Nicor's implementation of the requirements of this Order. U.S. EPA may submit to Nicor on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary, or such other summary as certified by U.S. EPA, shall serve as the basis for payment.

Nicor shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Program Accounting & Analysis Section
P.O. Box 70753
Chicago, Illinois 60673

Nicor shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Nicor Mercury Spill Sites" and shall reference the payer's name and address, the U.S. EPA site identification number B5P9, and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. §3717 and 4 CFR §102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

IX. RESERVATION OF RIGHTS

Nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Sites. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

X. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondents or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§9606(a), 9607(a).

XI. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Superfund Division, Region 5.

If Nicor seeks permission to deviate from any approved plan or schedule, Nicor's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. NOTICE OF COMPLETION

After submission of the Final Report, Nicor may request that U.S. EPA provide a Notice of Completion of the work required by this Order. If U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA will provide written notice to the Respondents. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify Nicor, provide a list of the deficiencies, and require that Nicor modify the Work Plan to correct such deficiencies. Nicor shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Nicor's failure

to implement the approved modified Work Plan shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting these removal actions is available for review during normal business hours in the U.S. EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondents may contact Thomas Krueger, Assistant Regional Counsel, at (312) 886-0562 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

XIV. OPPORTUNITY TO CONFER

Within 3 business days after issuance of this Order, Respondents may request a conference with U.S. EPA. Any such conference shall be held within 5 business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondents may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondents may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondents may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to U.S. EPA within 2 business days following the conference, or within 7 business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondents a right to seek review of this Order. Requests for a conference shall be directed to Thomas Krueger, Assistant Regional Counsel, at (312) 886-0562. Written submittals shall be directed as specified in Section V.2 of this Order.

XV. SEVERABILITY

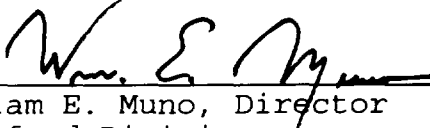
If a court issues an order that invalidates any provision of this Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Order, Respondents shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XVI. EFFECTIVE DATE

This Order shall be effective 2 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 2 business days after the day of the conference.

IT IS SO ORDERED

BY: _____


William E. Muno, Director
Superfund Division
United States
Environmental Protection Agency
Region 5

DATE: _____

9/6/00

ATTACHMENT A

U.S. ENVIRONMENTAL PROTECTION AGENCY
REMOVAL ACTION

ADMINISTRATIVE RECORD
FOR
NICOR MERCURY SPILL SITES
DUPAGE, KANE, LAKE, LASALLE AND MCHENRY COUNTIES, ILLINOIS

ORIGINAL
SEPTEMBER 5, 2000

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
1	07/26/00	Fiore, M., Hygieneering, Inc.	Stimple, B., U.S. EPA; et al.	FAX Transmission re: 4 Sampling Protocol for Mercury Contamination within a Residential Home	
2	07/31/00	Karl, R., U.S. EPA	Crawford, C., Hinkels & McCoy, Inc.	Letter re: General Notice 8 of Potential Liability and Request for Information for the Nicor Mercury Spill Sites w/ Attachment	
3	07/31/00	Karl, R., U.S. EPA	Nicor Gas c/o A. Foster-Rice; Gardner, Carton & Douglas	Letter re: General Notice 6 of Potential Liability and Request for Information for the Nicor Mercury Spill Sites	
4	07/31/00	U.S. EPA	File	Tables: U.S. EPA/START 12 Mercury Vapor Air Monitor- ing Results for the Period July 25-July 31, 2000 at the Nicor Mercury Spill Sites	
5	08/10/00	Stimple, B., U.S. EPA	Tappen, R., Nicor Gas	Letter re: Screening 1 of Additional Homes Potentially Contaminated with Mercury at the Nicor Mercury Spill Sites	

**Nicor Mercury
Sites AR**

Page 2

<u>NO.</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
6	08/15/00	Stimple, B., U.S. EPA	Distribution List	Memorandum: Pollution Report (POLREP) #1 [Initial] for the Nicor Mercury Spill Sites	3
7	08/18/00	Foster-Rice, A.; Gardner, Carton & Douglas	Krueger, T., U.S. EPA	Letter re: Nicor's Response to U.S. EPA's August 10, 2000 Letter Concerning Screening of Additional Homes Potentially Contaminated with Mercury at the Nicor Mercury Spill Sites	2
8	08/29/00	Corn, J. & M. Armstrong; Armstrong Forsenic Laboratory	Hendren, D., Ecology and Environment, Inc.	Two Laboratory Reports for Samples Collected at the Nicor Mercury Spill Sites	4
9	09/01/00	Karl, R., U.S. EPA	Malis, L., Chicago Heights Iron & Supply	Letter re: General Notice of Potential Liability for the Nicor Mercury Spill Sites (Scrap Yards and Processing Facilities)	3
10	09/01/00	Karl, R., U.S. EPA	Tribble, C., Nicor Gas	Letter re: General Notice of Potential Liability for the Nicor Mercury Spill Sites (Scrap Yards and Processing Facilities)	5
11	09/01/00	Nicor Gas	Illinois EPA	FAX Transmission re: 1 Nicor Scrap Collection Contractor List	
12	00/00/00	Stimple, B., U.S. EPA	Muno, W., U.S. EPA	Enforcement Action Memorandum: Request for an Emergency Removal Action at the Nicor Mercury Spill Sites in Cook, DuPage, Kane, Lake, LaSalle & McHenry	

ATTACHMENT B

LIABILITY FILE INDEX

1. August 3, 2000 from Gardner, Carton & Douglas for Nicor Gas to Carol Ropski, U.S. EPA: "Nicor Gas Mercury Sites, Response to General Notice of Potential Liability & Request for Information pursuant to Section 104(e) of CERCLA".
2. August 3, 2000 from Morgan Lewis & Bockius LLP for Henkles & McCoy, Inc. to Carol Ropski, U.S. EPA: "Nicor Mercury Sites --Response to Request for Information dated July 31, 2000".
3. August 9, 2000 from Morgan Lewis & Bockius LLP for Henkles & McCoy, Inc. to Carol Ropski, U.S. EPA: "Nicor Mercury Sites -- Response to July 31, 2000 Request for Information".
4. September 1, 2000 Facsimile from Nicor-Engineering to BOL Manager's Office: "Scrap Collection Contractor List".